

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIA KHAN,

Plaintiff,

-against-

Z & D TOUR, INC., FEDEX GROUND
PACKAGE SYSTEM, INC. and PENSKE
TRUCK LEASING CORP.,

Defendants.

: Civil Action No.: 1:21-cv-1476

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NOTICE OF REMOVAL

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**TO: United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007**

Defendant, FEDEX GROUND PACKAGE SYSTEM, INC. (“FedEx Ground”), by and through its undersigned counsel, files this Notice of Removal pursuant to 28 U.S.C. § 1441, *et seq.* FedEx Ground submits that the United States District Court for the Southern District of New York has original diversity jurisdiction over this civil action and this matter may be removed to the District Court in accordance with the procedures provided at 28 U.S.C. § 1446. In further support of this Notice of Removal, FedEx Ground states as follows:

STATE COURT ACTION

1. Plaintiff, Julia Khan, initiated this action by filing a Complaint in the Supreme Court of the State of New York, Bronx County, on or about January 12, 2021 under Index No. 800432/2021E. (A true and correct copy of the Complaint is attached hereto as **Exhibit “A.”**)

2. On January 22, 2021, Plaintiff filed an Affidavit of Service with respect to Defendant FedEx Ground. (A true and correct copy of the Affidavit of Service is attached hereto as **Exhibit “B.”**)

3. On January 22, 2021, Plaintiff filed an Affidavit of Service with respect to Defendant Z&D Tour Inc. (“Z&D”). (A true and correct copy of the Affidavit of Service is attached hereto as **Exhibit “C.”**)

4. On January 22, 2021, Plaintiff filed an Affidavit of Service with respect to Penske Truck Leasing, Corp. (“Penske”). (A true and correct copy of the Affidavit of Service is attached hereto as **Exhibit “D.”**)

5. On February 18, 2021, Christopher Fusco, Esq. filed a Notice of Appearance on behalf of FedEx Ground. (A true and correct copy of the Entry of Appearance is attached hereto as **Exhibit “E.”**)

6. On February 11, 2021, Sunil S. Tilak, Esq. filed a Notice of Appearance on behalf of Z&D. (A true and correct copy of the Notice of Appearance is attached hereto as **Exhibit “F.”**)

7. On February 11, 2021, Weston J. Kulick, Esq. filed a Notice of Appearance on behalf of Z&D. (A true and correct copy of the Notice of Appearance is attached hereto as **Exhibit “G.”**)

8. On February 11, 2021, Francis J. Leddy, III, Esq. filed a Notice of Appearance on behalf of Z&D. (A true and correct copy of the Notice of Appearance is attached hereto as **Exhibit “H.”**)

9. On February 15, 2021, Plaintiff and Z&D filed a Stipulation Extending Time to File a Responsive Pleading on behalf of Z&D. (A true and correct copy of the Stipulation Extending Time is attached hereto as **Exhibit “I.”**)

10. Upon information and belief, the documents attached as Exhibits “A”, “B”, “C”, “D”, “E”, “F”, “G”, “H” and “I” constitute all of the pleadings, process and orders which were filed in connection with the state court action.

11. This Notice of Removal is timely filed in that it is filed “within thirty days after the receipt by defendant[s], through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which” this action is based. 28 U.S.C. § 1446(b).

DIVERSITY OF CITIZENSHIP

12. Plaintiff Julia Khan is an adult individual residing in Bronx County, New York.

13. Both at the time Plaintiff initiated this action and at the time of this Removal, Plaintiff was and is a citizen of New York.

14. FedEx Ground is not incorporated in New York, nor does FedEx Ground have its principal place of business in New York.

15. Rather, FedEx Ground is a Delaware corporation with its principal place of business in Pennsylvania with an address of 1000 FedEx Drive, Moon Township, Pennsylvania 15108.

16. Both at the time Plaintiff initiated this action and at the time of this Removal, FedEx Ground was and is a citizen of Delaware and Pennsylvania.

17. Z&D is not incorporated in New York, nor does Z&D have its principal place of business in New York.

18. Rather, Z&D is a New Jersey corporation with its principal place of business in New Jersey with an address of 350 Rt. 46 East Suite 131, Rockaway, New Jersey 07866.

19. Both at the time Plaintiff initiated this action and at the time of this Removal, Z&D was and is a citizen of New Jersey.

20. Penske is not incorporated in New York nor does Penske have its principal place of business in New York.

21. Rather, Penske is a Delaware corporation with its principal place of business in Pennsylvania with an address of 2675 Morgantown Road, Reading, Pennsylvania 19607.

22. Both at the time Plaintiff initiated this action and at the time of this Removal, Penske was and is a citizen of Delaware and Pennsylvania.

23. As set forth above, Plaintiff and the Defendants are citizens of different states, therefore, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

AMOUNT IN CONTROVERSY

24. Plaintiff alleges that she has sustained severe and protracted personal injuries as a result of the accident, was consequently incapacitated from her normal pursuits, and has been informed that she will continue to suffer damages into the future. (See **Exhibit “A”** at paragraphs 64 and 66).

25. Plaintiff further alleges she has sustained or will sustain economic loss greater than basic economic loss of \$50,000 as defined in Article Fifty-One (“51”) of the Insurance Law of the State of New York. (See **Exhibit “A”** at paragraph 65).

26. Plaintiff demands judgment against Defendants “in a sum which exceeds the limits of all lower Courts which would otherwise have jurisdiction herein together with costs and disbursements of this action including interest and attorney’s fees” (See **Exhibit “A.”**)

27. As Plaintiff alleges that she has suffered, and will continue to suffer, severe and protracted personal injuries which have, and will, incapacitate her from her normal pursuits, and claims damages in excess of \$50,000 as well as costs and disbursements, therefore, the amount in controversy exceeds the jurisdictional requirement of \$75,000.

28. Because Plaintiff and Defendants are citizens of different states, and because the amount in controversy exceeds \$75,000, the United States District Court for the Southern District of New York has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

29. Section 1332 confers original jurisdiction over all civil matters where the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs, and is between citizens of different states.

30. FedEx Ground submits that this matter may be removed to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1441, which permits removal of any civil action to the district courts that have original jurisdiction.

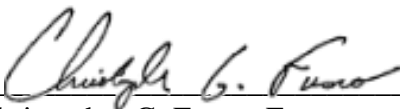
31. Defendants Z&D and Penske consent to and join in this Notice of Removal. A true and correct copy of Z&D and Penske's Consent to Removal are attached hereto as **Exhibit "J"** and **Exhibit "K"**, respectively).

32. A Notice of Filing of Notice of Removal to Federal Court, attached hereto as **Exhibit "L"**, will be filed in the Supreme Court of the State of New York, Bronx County, as soon as this Notice of Removal has been filed in this Court.

WHEREFORE, Defendant, FedEx Ground Package System, Inc., removes this civil action to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1441.

February 18, 2021

CALLAHAN & FUSCO, LLC



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(877) 618-9770

40 Exchange Place, 18th Floor

New York, New York 10005

*(Counsel for Defendant FedEx Ground
Package System, Inc.)*

CERTIFICATION OF SERVICE

I, Christopher Fusco, of full age, being duly sworn, according to law and upon my oath, depose and say:

1. I am an attorney with the law firm of Callahan & Fusco, LLC, and am assigned the handling of this action.

2. On February 18, 2021, I electronically filed a copy of the with DEFENDANTS NOTICE OF REMOVAL, which was served via SDNY ECF and regular mail on:

Richard K. Hershman, Esq.
E-mail: hershmanlawfirm@aol.com
Richard K. Hershman, P.L.L.C.
49 West 37th Street, 7th Floor
New York, New York 10018
Counsel for Plaintiff

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: February 18, 2021

By: 
CHRISTOPHER G. FUSCO